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Amendment No. 7 to SB1991

**Henry
Signature of Sponsor**

AMEND Senate Bill No. 1991

House Bill No. 2073*

by adding the following new sections immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION ____ Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by adding the following as a new subitem (L):

(L) Any otherwise deductible intangible expense paid, accrued or incurred in connection with a transaction with one or more affiliated business entities that are primarily engaged in the acquisition, use, maintenance or management, ownership, sale, exchange or any other disposition of intangible property. The adjustments in this subdivision shall not apply to such portion of the intangible expenses that the taxpayer can establish meets one (1) of the following:

(i) The taxpayer paid, accrued, or incurred such portion to a person during the same fiscal year who is not an affiliated business entity;
or

(ii) The transaction giving rise to the intangible expenses has a substantial business purpose and economic substance and contains terms and conditions comparable to a similar arm's length transaction between nonaffiliated business entities.

For purposes of subdivision (i) and (ii) above, the taxpayer shall establish that it meets the required criteria in accordance with the procedures set forth in subsection (d). Nothing in this subdivision shall be construed to limit or negate the provisions of Sections 67-4-2014 or 67-4-2112 where deemed appropriate by the commissioner.

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For purposes of this section the following definitions shall apply:

(a) "Affiliated business entity" means a business entity in which the taxpayer, directly or indirectly, has more than fifty percent (50%) ownership interest or a business entity that, directly or indirectly, has more than fifty percent (50%) ownership interest in the taxpayer.

(b) "Intangible expense" means expenses related to, or in connection with, the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining federal taxable income for purposes of subsection (a) above.

(c) "Intangible property" means patents, patent applications, trade names, trademarks, service marks, franchise rights, copyrights, licenses, research, management, consulting or technical expertise, formulas, designs, patterns, processes, formats, and similar types of intangible assets.

SECTION ____ Tennessee Code Annotated, Section 67-4-2006(b)(2), is amended by adding the following as a new subitem (N):

(N) Any item of income included in the computation of the taxpayer's federal taxable income for purposes of subsection (a) above, that, due to the provisions Section 67-4-2006(b)(1)(L), has not been allowed as an expense deduction for an affiliated business entity subject to the excise tax levied by this part.

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SECTION ____ Tennessee Code Annotated, Section 67-4-2006, is amended by adding the following as a new subsection immediately after the existing subsection (c) and relettering the remaining subsections accordingly:

The following procedures must be used to establish that a taxpayer meets the required criteria set forth in Tennessee Code Annotated, Section 67-4-2006(b)(1)(L)(i) and (ii):

(1) The taxpayer must first submit to the Commissioner a written request seeking approval for an exemption from making the required adjustments to the taxpayer's net earnings or net losses. Documentation as required by the Commissioner must be provided to establish that the intangible expense meets the criteria set forth in (i) or (ii).

(2) After approval of the request, the Commissioner shall issue a letter to the taxpayer stating that the taxpayer has met the requirements set forth in subdivision (i) or (ii). This letter shall also state the effective date of this approval and shall apply to the first and subsequent tax periods beginning on or after the effective date.

(3) The approval shall continue in effect so long as the circumstances justifying the approval remain substantially unchanged, or until changed or discontinued by the department, whichever occurs first. In the event that the department discontinues the approval, reasonable notice shall be given to the taxpayer affected, and any such

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discontinuation shall apply prospectively to the first and subsequent tax periods beginning on or after the date of such notice.

SECTION _____. Tennessee Code Annotated, Section 67-4-2006, is amended by deleting subsection (d) in its entirety and substituting instead the following language:

The amount computed under subsections (a), (b), (c), and (d) shall be the taxpayer's net earnings for purposes of the Tennessee excise tax base to which the tax rate is applied as provided in Tennessee Code Annotated, Section 67-4-2007.

SECTION _____. The amendments to Tennessee Code Annotated, Section 67-4-2006, by the provisions of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to tax years ending on or after June 30, 2003.